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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,137	09/27/2004	Jeffrey S Lockwood	7175-71858	1944

23643 7590 01/10/2007  
BARNES & THORNBURG LLP  
11 SOUTH MERIDIAN  
INDIANAPOLIS, IN 46204

EXAMINER
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REICHL, KARIN M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/509,137

Applicant(s)

LOCKWOOD ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/04, 9/05
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. **See MPEP 609.05(b)**. Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

### *Specification*

#### *Drawings*

2. The drawings are objected to because in Figure 3, a top plan view, the arrow from 22 should either extend to the wound contacting layer or be dashed to denote it as underlying structure. Also, the lines from 31, 30, 46, and 32 and the structure underlying the cover layer 20 should also be shown with dashed lines to denote underlying structure. The rightmost occurrences 64 should be 46 instead. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where

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necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Description*

3. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: page 5, line 22, page 6, line 30, page 7, lines 9, 20 and 22.

4. The disclosure is objected to because of the following informalities: In claims 6-7 and 9-12 a member which is formed of non-porous material is claimed. The remainder of the application also describes a member of non-porous material or non-porous and non-foam-like. Applicants have not explicitly defined "non-porous" but "porous" is defined as "having or full of pores" and "pore" is defined as "a minute orifice" or "minute surface opening or passageway" by the dictionary, i.e. the usual definition. Therefore a "non-porous" member would be one without orifices, surface openings or passageways. However, as described and claimed the member 19, i.e. 20 and 22, appear to be "porous" because it/they include orifices, surface openings or

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passageways and thereby the description of the member appears to be inconsistent. A clear consistent description of the member should be set forth. Note paragraphs 6 and 7 *infra*.

Appropriate correction is required.

### ***Claim Objections***

5. Applicant is advised that should claim 9 be found allowable, claim 12 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

6. Claims 1-7 and 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the description of the invention in the preamble, i.e. “for use...connected to a vacuum” and the description of the invention on the last two lines, i.e. “the port communicating with the vacuum source”, are inconsistent. In regard to claim 2, are the surfaces of claim 1 and the layer and cover of claim 2 one and the same, i.e. at a minimum how many communications, e.g. holes, opening, channels, passageways, etc. are required. Note claim 10. With regard to claims 7 and 9-12 see the discussion of the terminology “non-porous” in paragraph 4 *supra*, i.e. it is unclear whether the member is “non-porous” or not.

***Claim Language Interpretation***

7. Due to the lack of clarity discussed in paragraph 6 supra, claim 1 will be interpreted as only requiring the capability of connection to the vacuum source. Due to the lack of clarity discussed supra in 6 supra, claim 2 will be interpreted as requiring a wound contact layer defining the bottom surface of claim 1 and the cover layer defining the top surface of claim 1. Due to the lack of clarity discussed in paragraphs 4 and 6 supra, claims 7 and 9-12 will be interpreted as requiring a member of non-foam-like material.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Heaton GB '127.

Claim 1: See '127 at Figures 5-9c, page 2, first full paragraph, page 3, second to last line- page 4, fifth to last line and page 7, line 12-page 9, last line: the member is 30 and 73, the top surface is the top surface of 30 and the top surface of 73 extending beyond 30, the bottom surface is the bottom surface of 73, the discrete holes are the openings of the cells of open celled foam 73 at the bottom surface thereof, the at least one discrete opening is the opening of the cells of 73 at the top surface thereof beyond 30 or the openings at the periphery of 30 defined between projections 32, see Figures 5-7.

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Claim 2: The wound contacting layer is 73 and the channels are formed by the cells therein, the cover is 30 which is coupled to the wound contacting layer, e.g. by layer 20, and the cover cooperates with the channels/cells of layer 73 to define passageways 33 between the port 34 and each of the holes and the port and the at least one opening.

Claim 3: See Figure 7, i.e. a surface area of the cover is smaller than a surface area of the layer 73 so that the channels/cells of layer 73 extending beyond an outer edge of cover 30 define a plurality of the discrete openings, i.e. the opening of the cells of 73 at the top surface thereof laterally beyond 30 discussed supra with respect to claim 1.

Claim 4: The cover includes a plurality of discrete openings, i.e. the openings at the periphery of 30 defined between projections 32 as discussed supra with respect to claim 1, which communicate with the channels of the layer, see discuss of claims 1-3 supra, to define a plurality of the discrete openings.

Claim 5: see the discussion of claims 1, 3 and 4.

Claim 8: See the discussion of claims 1-5.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6-7 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaton '127 in view of Zamierowski PCT '795.

Claims 6 and 9-12 require a generally “non-porous” material forming the member. However, as best understood, see discussion in paragraphs 4 and 6-7 supra, the layer 73 of ‘127 is “porous”, i.e. foam-like. See the paragraph on page 4, starting at line 17 of ‘127. See also ‘795 at Figures 9 and 10 and page 18, line 20-page 21, line 3, i.e. a member for use in a vacuum bandage includes a wound contacting layer which can polyurethane foam or mesh or a hydrophilic colloid material. Therefore, to make the polyurethane foam layer of ‘127, i.e. a “porous” material as best understood, a polyurethane mesh or hydrophilic colloid layer instead, i.e. a “non-porous” material as best understood, i.e. non-foam-like, would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by ‘795. In so doing the member of the prior art would be of “non-porous” material as best understood.

Claim 7: The terminology “relative thin and flexible” is considered relative absent the claiming of specific dimensions of thinness and flexibility. See also ‘127 at the portions cited with respect to claim 1, e.g. layer 73 is described as “relatively thin” and “flexible” and extends beyond 30, i.e. defines peripheral portions of the member. Therefore the member is also considered to be “relatively thin” and “flexible”.

### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art also teaches various members for vacuum bandages with holes, openings and ports.



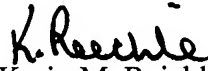
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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
December 19, 2006